

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MG MS00371

CASE NAME: GUARDIANSHIP OF SHARLENE M. COLEMAN

HEARING:

Petition for Appointment of Guardian

COUNSEL:

LARRY D BATTLE	(PET)...PRO/PER
BLEND A BATTLE	(PET)...PRO/PER
SHARLENE M COLEMAN	(MIN)...
BLENCIA Y COLEMAN	(MOT)...PRO/PER

GENERAL INFORMATION:

This case is set for hearing on Petition for Guardianship, person only, by maternal great aunt & uncle, minor 8

AND

Mother's petition to terminate

Continued from 10-18-04 to have CI obtain home study on mother in Indiana. Mother allowed visitation on 10-18-04 and then phone calls. Referred to fCS

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERWORK ARE NOTED:

1. Temporary letters issued on 6-11-04.
2. Needed to file proof of personal service on mother, but she has appeared, filed objection and filed her own petition to terminate. Notice to her has been satisfied.
3. Mother's petition indicates that she is able to take care of her child in Indiana.
4. Mother signed letter in August 2001 giving voluntary custody to petitioners so she could finish school. It appears that mother has graduated now. Petition alleges that during time that petitioners had child, mother never visited. Allegation that mother has cancer. Allegation that boyfriend (3yrs ago) may have inappropriately touched mother.
5. Need CI report from Indiana.

6. Need FCS report (mediation date of 12-14-04)

RECOMMENDATION:

Need CI report

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HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MG MS00384

CASE NAME: G'SHIP OF BRYCE D KLIEVER & SAVANNA PHELPS

HEARING:

Petition for Appointment of Guardian

COUNSEL:

TRACY SELBY	(PET)...PRO/PER
BRYCE D KLIEVER	(MIN)...
SAVANNA PHELPS	(MIN)...

GENERAL INFORMATION:

This case is set for hearing on Petition for Guardianship, person only, by maternal aunt, minors 4 & 2

Continued from 11-29-04. Court informed that Riverside case will be dismissed.

Continued hearing for correction of notes. Nothing new filed.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Court to note that mail addressed to the petitioner at her stated residence was RETURNED. It appears that the petitioner lives in an area with no residence delivery for mail and that mail must be sent to Post Office Box. Court should verify with petitioner under oath as to her current residence address and her post office box.
2. Mother is addicted to methamphetamine and is not in a program.
3. Father of oldest minor has not participated in minor's life. Father of younger minor (Savanna) may be currently involved in a Family Law court case. Court needs to inquire as to status of Savanna Phelps and whether there has been a ruling in the family law case. The petition includes a copy of a Stipulation to Terminate Parental Rights of Father, which has been signed by father. Court needs to determine if this order was entered in MFL 07461. **{Note indicates that it was entered on 6-7-04}**
4. There have been allegations of abuse to oldest minor by the wife of Savanna Phelps' father (stepfather's wife). CPS report not conclusive and their file was closed when the guardianship petition was filed.
5. Mother signed waiver and consent.

6. Need to file proof of personal service on father of Bryce.
7. Need to file proof of personal service on father of Savanna. It appears that he is not in California (either in a different state or in Iraq.). Certified mail, return receipt requested sufficient.
8. Need to complete section of Petition relating to the grandparents of the minors. Need information as to both minors (paternal and maternal grandparents).
9. Need to file proof of mailed service on CI and the grandparents.
10. Riverside Court Investigators have prepared a report positive for this guardianship.

RECOMMENDATION:

Need to complete petition and notice. Did not file proposed order, just proposed letters.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR
HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MG MS00387
CASE NAME: GUARDIANSHIP OF JESSE M. THEIS

HEARING:
Petition for Appointment of Guardian

COUNSEL:	
GLORIA R FRANKS	(PET)...PRO/PER
JESSE M THEIS	(MIN)...
CAROL L CARTER	(MIN)...
DANIEL R CARTER	(MIN)...
GINGER CARLONE	(MIN)...

GENERAL INFORMATION:

This case is set for hearing on Petition for Guardianship, person only, by maternal grandmother, minors 16 (Jesse), 14 (Carol), 12(Daniel) & 10 (Ginger)
Continued from 11-22-04. Nothing new filed

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Temporary letters issued 11-8-04.
2. Court to review Confidential Screening Form and Cletts report. If the Court has a concern regarding the petitioner, Court may wish to request that the Court Investigator complete a home study on the petitioner.
3. Mother is deceased.
4. Father of Jesse is Ralph Theis. He is reported to be unlocateable.
5. Father of Carol & Daniel is Andrew Carter. He is reported to be incarcerated.
6. Father of Ginger is reported to be unknown. File birth certificate.
7. Need information regarding paternal grandparents of each minor. Need information regarding maternal grandfather. Are there other siblings?
8. Need to file proof of personal service on all fathers or due diligence or birth certificate showing unknown.
9. Need to file proof of personal service on Jesse, Carol & Daniel.

RECOMMENDATION:

Need notice, possibly CI report at court's discretion,. See MFL 04803 (attached)

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MPRMS00902

CASE NAME: ESTATE OF LARRY K. LAYMON

HEARING:

Hearing re: REVIEW

COUNSEL:

LINDA G. WAUGH	(PET)...PRO/PER
LARRY K. LAYMON	(DEC)...

GENERAL INFORMATION:

This case is set for hearing on Review

Continued from 3-8-04, 6-14-04, 7-26-04 and 9-13-04

Continued again from 11-29-04. No appearance.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Need status report. Last was in January 2003 and it mentioned litigation still pending. What is status? What is case number/venue?
2. If the litigation is over and no monetary gain, can this estate be closed following the filing of a "no assets" declaration?

RECOMMENDATION:

If no appearance again, court could suspend powers and set OSC re: Failure to Appear and to file Status Report and/or Petition for Final Distribution. Issue citation and have it personally served.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01113

CASE NAME: ESTATE OF RONALD JAMES HOPKINS

HEARING:

Accounting Review

COUNSEL:

CONNIE L EAGLETON (PET)...IGNAZIO FICARA
RONALD JAMES HOPKINS (DEC)...

GENERAL INFORMATION:

This case is set for hearing on Accounting Review/Status Report

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Status report filed indicating that estate is not yet ready to close because of need to sell real property. See matter below for approval of sale.

RECOMMENDATION:

CASE #: MPRMS01113

CASE NAME: ESTATE OF RONALD JAMES HOPKINS

HEARING:

Report Sale and Petition for Order Confirming Sale of Real Property.

COUNSEL:

CONNIE L EAGLETON (PET)...IGNAZIO FICARA
RONALD JAMES HOPKINS (DEC)...

GENERAL INFORMATION:

This case is set for hearing on Report of Sale

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Two properties: 1121 Cherokee Trail, Yucca Valely (APN 0629-051-49) and unimproved real property in Yucca Valley (APN 0629-051-48). Sale is for new appraised amount of \$50,000. **Need explanation as to why this petition is filed. Court signed order on 6-7-04 for sale of these properties to the same buyers for \$75,000 (the old appraised value). What happened to the sale? Will need petition to vacate the prior order before Court may proceed with selling again.**
2. **PC 10350 provides a method for when a prior court sale needs to be vacated. On petition, court may vacate the order confirming the sale. But if so, PC 10351 requires that the petition be made within 60 days and the sale is at least as on good as terms as the original sale. Neither requirement can be satisfied here, and so any petition to vacate should not be based upon 10351 but on the Court's equity powers if there is a good reason to vacate the prior sale and confirm a lower purchase price than the first sale.**
3. **With new sale, need to publish notice of sale again. (PC 10350(c). File proof of publication.**
4. Requesting more in commissions than usually allowed (10% on unimproved and 6% for improved) for total of \$3900. Court may wish to inquire as to basis for higher commission of \$900 than if only paid the 6% commission. In this particular case, it appears that the unimproved land is next to the improved land. The seller for both properties is the same. So what additional expertise was required? File supplement.
5. Local rule requires deposit of 10%. In this case, only putting down \$2000. It should be \$5000.

RECOMMENDATION:

Need petition to vacate (with proposed order) and supplement.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01118

CASE NAME: ESTATE OF JEAN M. McGEE

Accounting Review

COUNSEL:

JAMES HUTCHINSON (PET)...HEALY & HEALY
JEAN M MCGEE (DEC)...

GENERAL INFORMATION:

This case is set for hearing on Accounting Review/Status Report

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Status report filed. But file proof of service and notice which complies with PC 12201. Need to also provide notice per Special Notice Request.
2. States cannot close because need I & A for property. This has now been filed.
3. Second reason to avoid closing estate is that personal representative has not decided whether to sell the house or divide it, and so requests an additional 6 months.

RECOMMENDATION:

Need to clear note 1 prior to court approving status report.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR
HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01129

CASE NAME: IN THE MATTER OF DAVID WITTWER

HEARING:

Hearing re: PET'N FOR FNL APPROVAL OF FINAL REPORT, ACCNTING

COUNSEL:

RACHEL ANN WITTWER (PET)...BARBARA G. KNOX

DAVID WITTWER (DEC)...

GENERAL INFORMATION:

This case is set for hearing on Final Approval of Final Report and OSC re: Accounting
(continued from 12-6-04 with sanctions dismissed)

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Administrator waives statutory compensation.
2. Attorney waives statutory fees.
3. File verified supplement stating the ages of Phillip and Valerie Wittwer. In original petition, it is noted that both were minors. If they are still minors, then the petition needs to state how their portion of the estate will be distributed.

RECOMMENDATION:

Need to clear note 3 prior to approval. Once approved, set hearing for filing of receipts and final discharge for 1-9-06.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01143

CASE NAME: ESTATE OF CATHERINE A MCINTYRE

HEARING:
Accounting Review

COUNSEL:
TERESA F. MCYNTYRE-STEVENS (PET)...PRO/PER
CATHERINE A. MCINTYRE (DEC)...

Off-calendar. Heard on 12-27-04

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01154

CASE NAME: IN THE MATTER OF WALDIMER DEAN PETERSON

HEARING:

Report Sale and Petition for Order Confirming Sale of Real
Property.

COUNSEL:

GENIE MAE MOCK (PET)...IGNAZIO
WALDIMER DEAN PETERSON (DEC)...

GENERAL INFORMATION:

This case is set for hearing on Petition to Confirm Sale of Real Property. This matter was originally before the Court on 10-4-04 and then continued to 11-8-04 for re-appraisal. On 11-8-04, the matter was taken off calendar by Attorney Ficara. This new petition, with a new buyer, was then filed.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Sales price is \$32,500, which is at least 90% of the re-appraised value of \$36,000. OK
2. Commission of 6%. OK
3. Deposit amount OK
4. No issues

RECOMMENDATION:

OK to approve, absent higher bid. First over bid would be \$34,625.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01173

CASE NAME: ESTATE OF WALTER J. DeROCHE

HEARING:

OSC re: Inventory & Appraisal

COUNSEL:

ROY MCGE (PET)...MARSHA CINIELLO
WALTER J. DEROCHE (DEC)...

GENERAL INFORMATION:

This case is set for hearing on OSC re; I & A
Continued 2 times already because of failure to file

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Still not filed.

RECOMMENDATION:

Suspend powers. Clerk to send notice to bonding company. Set OSC re: Failure to File Documents, Removal & Sanctions. Issue citation and have it personally served.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01185

CASE NAME: MATTER OF ORA E. POPE

HEARING:

Motion for Summary Judgment

COUNSEL:

JACK S HERTWICK (PET)...IRA N TUCK
JACQUELINE K HACKNEY (PET)...IRA N TUCK
ORA E POPE (DEC)...
SARA B TAYLOR (OBJ)...HEALY & HEALY

GENERAL INFORMATION:

This case is set for hearing on Summary Judgment

Continued from 11-22-04

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Nothing new filed; no new motion filed to address the standing issue. See prior Confidential Memo.

RECOMMENDATION:

See prior Confidential Memo

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

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DATE: 01/03/05 TIME: 8:30 DEPT: MPR

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DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01254

CASE NAME: MATTER OF THE VIRGINIA J. BEISER REVOCABLE TRUST

HEARING:

Hearing re: PET'N FOR REMOVAL OF CURRENT TRUSTEE & APPOINT NEW

COUNSEL:

KANSAS STATE UNIVERSITY FOUNDATION...TAYLOR L. CLARK

K.S.U. COLLEGE OF VETERINARY MEDICINE TAYLOR L. CLARK

IRA (DEF)...

IRA N. TUCK TRUSTEE ()...

IRA N. TUCK TRUSTEE ()...

GENERAL INFORMATION:

This case is set for hearing on Petition for Determination that Proposed Petition to Compel Compliance with Terms of Trust and for Removal of Trust Would not be a Contest within the Terms of the No-Contest Clause

Continued from 9-27-04 for review of Reply to Response filed by Kansas State University
on 9-23-04

Continued from 11-22-04. New declaration of Taylor Clark filed on 11-22-04

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. PC 21320 states that a determination whether a proposed petition violates a no contest clause may not be made if a determination of the merits of the petition is required.
2. The proposed petition states that the petitioner is a beneficiary under the trust. Response filed by Trustee, Ira Tuck, contesting whether petitioner is a beneficiary. Trust states that residuary assets to go to establish a scholarship fund at College of Veterinary Medicine at Kansas State College. File supplemental Ps & As regarding how petitioner has standing to file the 17200 Petition for Instructions; how petitioner is a beneficiary. **Reply filed**

2. The proposed petition states that the petitioner is a beneficiary under the trust. Response filed by Trustee, Ira Tuck, contesting whether petitioner is a beneficiary. Trust states that residuary assets to go to establish a scholarship fund at College of Veterinary Medicine at Kansas State College. File supplemental Ps & As regarding how petitioner has standing to file the 17200 Petition for Instructions; how petitioner is a beneficiary. **Reply filed**

re: standing. States that the University is a named beneficiary as follows: "The rest and residue of the trust estate shall be used to establish a scholarship fund in the memory of Dr. Charles A. Jerome, Sr., in loving memory of his daughter, Virginia Jerome Beiser, at the College of Veterinary Medicine of Kansas State University..." The question at issue is whether this language is sufficient to determine that KSU is a beneficiary or if the setting up of a scholarship there can be done independently. Reply states no California case law on point and cites to a case from Pennsylvania where a diocese which was the beneficiary of scholarships was given standing. Does the Trust wish to file counter-Points & Authorities on Standing?

3. Declaration of Taylor Clark states that when trust became irrevocable, Mr. Tuck mailed out, as required, the proper notice. Sent it to College of Veterinary Medicine, which Mr. Clark argues is proof of the standing of the College.
4. Petition contests role of Mr. Tuck as he drafted the will and trust, and so he should be removed. The no-contest clause in the Trust states that without a substantial basis, unsuccessful litigation aimed at the removal of a successor trustee shall be treated as though an attack on the validity of the trust. **Reply argues that this petition does not contest the trust itself, as it relates to the appointment or removal of a fiduciary. Does the Trust wish to file counter-Points & Authorities on this issue?**
5. Beneficiaries are free to bring up questions of violation of public policy. Estate of Ferber (1998) 66 Cal.App.4th 244. Is this the basis of the removal?
6. PC 21307 states that a no contest clause is not enforceable against a beneficiary to the extent that the beneficiary, with probable cause, contests a provision that benefits a person who drafted the instrument. Is this 17200 petition making an allegation under PC 21307?
7. Response filed by Kansas State University College of Veterinary Medicine and Kansas State University Foundation

RECOMMENDATION:

If there is no further Response, set the matter for contested hearing.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01270

CASE NAME: ESTATE OF LEMUEL DAVID PARSONS

HEARING:

Spousal Property Petition hearing.

COUNSEL:

JEANNE PARSONS (PET)...GARY M KOSTON
LEMUEL DAVID PARSONS (DEC)...

This case is set for hearing on Spousal Property Petition

Continued from 11-8-04

Continued again from 12-13-04. Matter continued again for correction of notes

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Notice complete now
2. Petition procedurally complete.

RECOMMENDATION:

None.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01287

CASE NAME: ESTATE OF THOMAS ELAM NORVILLE

HEARING:

Hearing Re: SPOUSAL PROPERTY PETITION.

COUNSEL:

MARY L NORVILLE (PET)...IGNAZIO

GENERAL INFORMATION:

This case is set for hearing on Spousal Property Petition

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Need to file verified supplement to comply with all the requirements of PC 13651, such as
 - a. the facts upon which the petitioner bases the allegation that all or part of the estate passes to surviving spouse (need facts to show if community, and if separate property, facts to establish that spouse is sole heir).
 - b. the list of intestate heirs (subsection 5)

RECOMMENDATION:

Need to file verified supplement.

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PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 01/03/05 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01292

CASE NAME: MATTER OF JANICE LYNN GARDNER

HEARING:

Petition to determine succession to Real Property

COUNSEL:

CRAIG A GARDNER (PET)...J. TERRENCE MOYNIHAN
JANICE LYNN GARDNER (DEC)...

GENERAL INFORMATION:

This case is set for hearing on Petition to Determine Succession

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Need to file proof of service/notice of hearing as to all family and those persons named in will.

RECOMMENDATION:

RFA subject to 1.